

Sale of school annuals are considered noncompetitive sales. See 86 Ill. Adm. Code 130.2005.  
(This is a GIL.)

May 16, 2007

Dear Xxxxx:

This letter is in response to your letter dated August 29, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. Our office has chosen not to issue a Private Letter Ruling on this issue because the issue is already covered by the Department's regulations at 86 Ill. Adm. Code 130.2005 regarding "Persons Engaged in NonProfit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Persons", 86 Ill. Adm. Code 130 "Auctioneers and Agents", and letter ST 01-0096-GIL. In your letter you have stated and made inquiry as follows:

ABC respectfully request [sic] a written clarification of your agency's position regarding the imposition of use tax on K-12 school yearbooks ordered by parents through a third-party sales agency rather than through their child's school.

**STATEMENT OF FACTS:**

ABC (hereinafter sometimes referred to as 'the taxpayer') is an out-of-state manufacturer of school yearbooks. The school contracting for publication is responsible for the content of the yearbook. As this is a purchase agreement, the school is also responsible for the sale and delivery of the yearbook to the student or other purchaser.

For an additional fee, a school may also contract with the taxpayer for three optional programs for selling the yearbooks; these three optional programs also give purchasers alternative payment methods. The three optional programs are (1) a school order day, (2) a home order mailing, and (3) a website and call center for taking orders. Purchasers (typically parents) ordering through the optional programs may be billed for purchases at a later date or they may pay by credit cards, make installment payments, or pay by check. Yearbooks ordered through the option programs are delivered to the

school for distribution, the same as yearbooks not ordered through the programs. The contracts or enrollment forms for each of the three optional programs state the following: 'I understand that ABC or other third parties will act on behalf of the school to bill students for yearbooks and collect funds from them in accordance with the pricing specified above.'

The taxpayer has contracted with another party or independent agency to develop and service the website and call center for the school yearbook sales. The independent agency also provides payment processing. Payment processing by the independent agency includes billing services for books ordered through any one of the three optional programs. An edited copy of the agreement between the taxpayer and the third party agency is attached; all identifying references to the third-party provider have been deleted.

The order forms and invoices used by the three optional programs list the name of the school. The return address for payments lists the name of the school, care of the order center. Persons placing orders through the internet site must enter a school identification number to access yearbooks sales information for a particular school. The purchaser is directed to make checks payable to the order center.

If the school chooses one of these three options, the taxpayer contracts with the agency on behalf of the school; the school dictates to the agency the price to charge for the yearbook. When the school is invoiced for the yearbooks, the per-unit charge paid by the taxpayer to the agency for their assistance in facilitating the orders is passed through to the school; i.e., included on the invoice to the school.

As can be seen, the taxpayer merely serves as the go-between for the school and the agency. If, in fact, the total of the payments received directly from the parents (i.e., the retail sales price as dictated by the school to the agency) happen to exceed the total amount of the taxpayer's contract with the school (i.e., the wholesale cost of all the books) the school receives a refund of the overage.

#### DISCUSSION:

There is no disagreement that use tax is not required on the wholesale price charged to the school for those books sold under circumstances wherein the students pay the school and the school pays the taxpayer, assuming that the school has properly completed and provided to the taxpayer an exemption certificate.

In the past, the taxpayer instructed the third party agency to include use tax on the pre-ordered yearbook invoices. ABC has timely remitted all use tax collected through the orders generated by this third-party agency.

Certain individuals have questioned the practice of adding use tax to the invoices to the parents that are handled through the third-party agency. **Their objections are based on the theory that because the money collected directly from the parents is credited to the school's account on the manufacturer's books, and because neither the taxpayer nor the third party benefit from the payments collected pursuant to the individual sales to the parents, then the orders processed on the school's behalf should also qualify for tax free treatment.**

#### QUESTIONS:

Is the independent agency required to include use tax on the price of the books quoted to the parents? Is the answer the same if, instead of a public school, the purchaser is a not-for-profit private or parochial school or other not-for-profit organization?

Copies of the relevant contracts are attached.

This question spans multiple tax periods. To the best of our knowledge and belief, this identical issue is not involved in any pending litigation for ABC or any trade association.

To the best of our knowledge, there are three pertinent GILs; these are:

ST 05-0038-GIL May 31, 2005

The last sentence of the second paragraph of the Department's response states the following: 'Please be aware that only sales to organizations holding the E-Number are exempt, not sales to individual members of the organization.'

ST 06-0013-GIL February 3, 2006

The last two sentences of the fourth paragraph of the Department's response state the following: 'Who is doing the actual selling will depend upon the facts in each case. Some of those facts include, but are not limited to: who the checks are made out to; who is responsible for the damaged goods; and who is listed on the order forms.'

ST 03-0201-GIL December 23, 2003

The entire third part of the ruling request presents scenarios similar, but not identical, to the situation involving ABC. In each of the three examples set forth in the ruling request, the FO collected from the end consumer. In the current situation, the third party agency collects the payments, including tax, and turns these funds over to the manufacturer (ABC). ABC then remits the tax collected to the Illinois Department of Revenue and applies all the remaining funds to the school's account.

As can be seen from a review of these three GILs, there are differing interpretations as to the proper handling of the use tax issues. This request for a private letter ruling is, therefore, an attempt by ABC to determine with finality the proper administration of the use tax laws of the state of Illinois in compliance with regulations.

Although no trade secrets are included with this letter, ABC respectfully requests that all references to its name and/or address be deleted prior to public dissemination.

If you prefer to contact me by means other than a letter, my telephone number is #\_

Thank you very much for your time and attention to this request.

## **DEPARTMENT'S RESPONSE**

It appears, from the information in your letter, that yearbook sales are made to students by the school with the third party organization merely soliciting and processing orders. ABC apparently makes sales of yearbooks to the school for resale and invoices reflect this set up. We hope that the following information, based upon these assumptions, will be helpful.

In general, sales of books by schools do not qualify for exemption from sales tax because such book sales are considered to be in competition with retailers. However, schools that have been

issued a valid tax exemption identification number by the Illinois Department of Revenue are authorized to engage in three limited types of nontaxable selling (see 86 Ill. Adm. Code 130.2005 (a)(2, 3, and 4)). 86 Ill. Adm. Code 130.2005(b)(4)(C)(ii) provides that “[s]chools are not taxable on their sales of school annuals because these are noncompetitive items.”

If the third party organization were actually selling the yearbooks as an agent of the school, our analysis would be somewhat different. This is because when agents, such as a third party organization, engage in selling, the person who is liable for Retailers’ Occupation Tax (sales tax) will depend upon whether the agent is working on behalf of a disclosed or undisclosed principal. See 86 Ill. Adm. Code 130.1915, regarding Auctioneers and Agents. An agent acting on behalf of an unknown or undisclosed principal is considered to be the owner of the tangible personal property that will be sold and is responsible for paying Retailers’ Occupation Tax on the gross receipts from the sale as well as filing a sales tax return.

However, if the agent is acting on behalf of a known or disclosed principal, the sale of the tangible personal property is taxable to the principal and not the agent. A principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the agent.

If a third party organization acts on behalf of a known or disclosed principal, e.g. a school with a valid Illinois tax exemption identification number, yearbook sales may be made tax exempt. If, however, a third party organization acts on behalf of an unknown or undisclosed principal, the third party organization will be liable for Retailers’ Occupation Tax and must collect Use Tax from its customers.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

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